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6 | Attorneys for Plaintiff
DIOPTICS MEDICAL PRODUCTS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 DIOPTICS MEDICAL PRODUCTS, INC.,
a California corporation,

Plaintiff.

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14 BEI FRANCHISING, INC.,
15 a Michigan corporation.

Defendant

Case No. C-06-02643 (MMC)

**CONSENT MOTION TO ENLARGE
TIME AND ORDER EXTENDING
CERTAIN DUE DATES AND
[PROPOSED] ORDER**

Date: November 3, 2006

Time: 9:00 a.m.

Courtroom: 7, 19th Floor

Before: Honorable Maxine M. Chesney

1 **NOTICE OF MOTION AND MOTION**

2 TO DEFENDANT BEI FRANCHISING AND ITS ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on November 3, 2006 at 9:00 a.m. or as soon thereafter as
4 the matter may be heard in the above-entitled Court, located at 450 Golden Gate Avenue, San
5 Francisco, California, 94102, plaintiff DIOPTICS MEDICAL PRODUCTS, INC. ("Dioptrics"),
6 will, and hereby does, move this Court for an order to extend the date for defendant BEI
7 FRANCHISING, INC. ("BEI"), to answer Dioptrics's complaint and the date for the parties to: (i)
8 meet and confer regarding initial disclosures, early settlement, ADR process selection, and a
9 discovery plan; (2) file the ADR Certification Signed by Parties and Counsel; and, (3) file either a
10 Stipulation to the ADR Process or a Notice of Need for ADR Phone Conference. This consent
11 motion will be based on the attached memorandum of points and authorities, the documents and
12 records on file with the Court in this action, without oral argument, as defendant BEI consents to this
13 motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Dioptics Medical Products, Inc., is the owner of several registered trademarks
 3 incorporating "Polar" in Trademark International Classification Code 009. On April 19, 2006
 4 Dioptics filed suit against BEI alleging that BEI's registered marks and graphics mark application
 5 infringed Dioptics's Polar Family of Marks. *See* Complaint, ¶¶14-18. The parties have been in
 6 settlement negotiations and are close to finalizing a settlement agreement. Dioptics files this
 7 consent motion for an extension of the deadlines listed in the below chart.

8 BEI consents to this motion. Lee Decl, ¶ 2, Ex. A. The parties have not filed a joint
 9 stipulation because BEI's counsel, Mr. Benjamin B. Reed, is not admitted to practice law in the
 10 State of California and is not admitted *Pro Hac Vice* in this proceeding.

Date	Proposed Date	Event
09/22/2006	10/06/2006	<ul style="list-style-type: none"> ○ Last day for Defendant BEI to answer Plaintiff Dioptics's complaint
09/22/2006	10/06/2006	<p>Last day to:</p> <ul style="list-style-type: none"> ○ meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan ○ file ADR Certification Signed by Parties and Counsel ○ file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference

17 Accordingly, Dioptics's requests that at the Court's earliest convenience the Court grants
 18 Dioptics's motion to extend the due dates as indicated in the chart above, without the need for oral
 19 argument since BEI consents to this motion.

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 21 DATED: September 22, 2006

Respectfully submitted,

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 23 McDERMOTT WILL & EMERY LLP

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 25 By /s/ John A. Lee

David S. Bloch
 John A. Lee

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 27 Attorneys for Plaintiff
 28 DIOPTICS MEDICAL PRODUCTS, INC.

[PROPOSED] ORDER

Good cause appearing therefore, it is hereby ORDERED that all dates and deadlines are extended as indicated in the chart below.

New Date	Event
10/06/2006	<ul style="list-style-type: none"> ○ Last day for Defendant BEI to answer Plaintiff Dioptics's complaint
10/06/2006	<p>Last day to:</p> <ul style="list-style-type: none"> ○ meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan ○ file ADR Certification Signed by Parties and Counsel ○ file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference

IT IS SO ORDERED.

DATED: September 25, 2006

Mafine M. Cheney

Honorable Maxine M. Chesney, Judge
United States District Court

MPK 115454-1.070302.0028